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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 636

ABRAHAM TEITELBAUM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 1280–1352)[1] are not officially reported.[2] The opinion of the court of appeals (Pet. App. 1a–14a) is reported at 294 F. 2d 541.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 1961, and the petition for rehearing was denied on October 3, 1961 (Pet. App. 15a). The petition for a writ of certiorari was filed on

[1] Record references are to the original record.

[2] The Tax Court findings and opinion have been separately printed and furnished to the Court. They shall be referred to as "T.C. Op."

December 27, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Tax Court's findings, sustained by the court of appeals, with respect to deficiencies in tax and fraud, are supported by substantial evidence and are not clearly erroneous.

2. Whether the record affords support for any finding of disqualifying personal bias or prejudice on behalf of the Tax Court judge.

3. Whether Section 58 and Section 294(d) of the Internal Revenue Code of 1939, which provide for the declaration of estimated tax by individuals and for additions to tax for failure to file such declaration or to pay installments of estimated tax or for substantial underestimation of estimated tax, are constitutional.

STATUTE INVOLVED

Sections 22, 23, 24, 58, and 294(d) of the Internal Revenue Code of 1939 are set forth in the Appendix, *infra*, pp. 19–28.

STATEMENT

This case involves multiple questions of fact with respect to deficiencies in income tax for the years 1944 through 1947 and 1949 through 1951; statutory additions to the tax for fraud for 1946, 1947 and 1951; and additions to tax under Section 294(d)(1)(A) of the 1939 Code (App., *infra*, pp. 25–26) for failure to file an estimated tax return for 1951 and under Section 294(d)(2) (App., *infra*, pp. 27–28) for substantial underestimation of estimated tax for 1950. The

facts were established in the Tax Court in part by stipulation and in part by extended hearings and numerous documentary exhibits. The Tax Court made detailed findings of fact (R. 1282–1341, T.C. Op. 2–44), and these findings were affirmed by the court below as supported by the record (Pet. App. 1a–11a).[3] The facts as found by the courts below are as follows:

Taxpayer and Esther Melnick Teitelbaum were husband and wife during the years 1944 to 1951, inclusive. Taxpayer resided in Chicago, Illinois, throughout the entire period. Esther Melnick Teitelbaum resided in Chicago until approximately the latter part of 1947, at which time she moved to California, where she resided continuously thereafter. During the years 1944 through 1951, taxpayer and his wife were attorneys at law, licensed to practice in the State of Illinois; they practiced as sole partners under the firm name of Teitelbaum and Melnick (R. 1282–1283, T.C. Op. 2–3).

1. During 1944 through 1947, while he was counsel for the Chicago Restaurant Association, taxpayer received certain sums which he characterized as Christmas bonus gifts and which he did not report as taxable income (R. 1311, T.C. Op. 22). According to the minutes of the Chicago Restaurant Association, the reason for these payments was that (Pet. App. 3a) "* * * at this time of the year we usually consider the matter of a Christmas Gift to Mr. Teitelbaum to to cover additional expenses which he incurs." More-

[3] Judge Major dissented as to one issue (Pet. App. 11a–14a), but concurred otherwise in the majority opinion.

over, in a letter from the executive vice-president of the Association, taxpayer was advised (Pet. App. 3a):

> In the past years, * * * you received sums of money at or about Christmas each year * * *. While the latter was in the nature of a gift, it was intended to augment your expense account * * *. You have always advised us that the expenses we gave you, in addition to the basic retainer, was not sufficient.

The court of appeals held that the Tax Court's finding (R. 1341, T.C. Op. 44), that the Christmas bonus payments were compensation, is not clearly erroneous and must stand (Pet. App. 4a).

2. During the years 1949, 1950 and 1951, Teitelbaum and Esther Melnick Teitelbaum were partners in a partnership known as Teitelbaum and Simon. Together they were entitled to 50 percent of the net income of the partnership. The partnership of Teitelbaum and Simon claimed a deduction of $79,951.66 on its 1950 income tax return for the conversion of electricity in the Fine Arts Building from direct current to alternating current. This conversion was accomplished pursuant to an ordinance of the City of Chicago. "Although the conversion did not increase the value of the building as such, it did affect the amount which a buyer would be willing to pay for the building." (R. 1315–1316, T.C. Op. 25–26.) Taxpayer's architect, on cross-examination, stated that he would advise a buyer who contemplated the purchase of a building in which such conversion was required by ordinance and had not yet been made to take the cost of such conversion into consideration in arriving at a

purchase price (Pet. App. 4a; R. 851–856). The Tax Court, sustaining the Commissioner, held (R. 1345–1346, T. C. Op. 47) that the electric conversion was a capital expenditure which must be amortized out of the income from the years of its useful life. The majority of the court of appeals affirmed (Pet. App. 4a–5a), Judge Major dissenting on this point alone (Pet. App. 11a–14a).

3. In 1948, taxpayer and his first wife acquired property near Indio, California, which included a date ranch and residential facilities, for a total consideration of $127,372.09. Of this amount, at least $88,872.09 was allocable to the residence and related improvements, including a main house with a high-ceilinged, two-fireplace living room of 45 by 60 feet, a guest house, swimming pool, pool house and servants' house. About $21,000 was allocated to the land and $17,500 to the trees and related improvements. There were also a caretaker's house, a house for the farm laborers, 300 date trees covering about six to seven acres, and about two and one-half acres of grapefruit. Although taxpayer asserted that the previous owner of the property had made a profit, taxpayer also had been informed that, during the years following World War II, the price of dates had declined and that an over-all loss had resulted for the most recent year which the previous owner would claim as a business loss for tax purposes. Taxpayer also had sought information from the Date Growers' Association in California. In 1947, domestic date prices were declining, partly because of the importation of dates from abroad, which had begun that year. (Pet. App. 5a; R. 1313–1314, T. C. Op. 23–24.)

Taxpayer realized a loss from the operation of this property during 1948 and deducted the full amount as a business loss on the partnership return filed for that year. Taxpayer's first wife, Esther Melnick Teitelbaum, used the big house and its related buildings as her major residence from the time of its acquisition and continuously after her separation from the taxpayer in 1949. No adequate records were maintained by either taxpayer or his first wife for the date ranch, the substantial residential expenses being commingled with those of the farming operation. The Tax Court concluded that no effort had been made to put the ranch on a paying basis and that taxpayer had devoted little time to the operation and had exercised no managerial responsibility after separating from his wife in 1949. Accordingly, the Tax Court sustained the Commissioner's determination that the taxpayer had not intended and did not conduct the operation of the date farm as a business for profit and that his losses from the operation were not deductible as business losses. The court of appeals affirmed. (Pet. App. 5a–6a; R. 1314–1315, 1344–1345, T.C. Op. 24–25, 46.)

4. On May 31, 1944, the Tyted Company was incorporated, and on June 2, 1944, it issued all 1,000 shares of its authorized capital stock, 999 shares to taxpayer and Esther Melnick Teitelbaum as joint tenants and one share to Josephine Melnick. Taxpayer and his wife paid no consideration to Tyted for the stock they received. The ownership of the capital stock of Tyted remained unchanged through December 31, 1947. On April 24, 1945, the corporation acquired record title to

the Fine Arts Building and portions of the Auditorium Hotel and Theatre, in Chicago. The corporation's actual interest was an undivided one-half interest with beneficial ownership of the other undivided one-half interest in Paul R. Simon or Bessie L. Simon. On May 1, 1945, the corporation conveyed title to the La Salle National Bank, as trustee. The trust agreement provided that the beneficial interest in the properties was in the Tyted Company, and the power of direction was vested in the taxpayer and Esther Melnick Teitelbaum. (Pet. App. 7a; R. 1283–1286, T.C. Op. 3–5.) On February 27, 1947, the corporation sold to Roosevelt College its beneficial interest in the portions of the Auditorium Hotel and Theatre, and the trustee conveyed the legal title to the college. The consideration consisted of checks in the total amount of $152,000 and a promissory note payable to bearer in the face amount of $250,000, which was valued at $200,000. (Pet. App. 7a; R. 1300–1301, T.C. Op. 14–15.) On May 1, 1947, the corporation assigned its interest under the trust, which purported to be the entire beneficial interest in the Fine Arts Building, as follows: an undivided one-half interest to Bessie L. Simon and an undivided one-half interest to the taxpayer and his wife (Pet. App. 7a; R. 1301, T.C. Op. 15).

During 1949, the taxpayer received three interest payments of $2,500 each on Roosevelt College's note. During that period he was negotiating with the college for the sale of the note, which was sold in that year, and for which taxpayer received an additional $190,000. He reported the selling price as $197,500 in his tax

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return for 1949 (Ex. 23) but reported no interest income for that year. He explained in the capital gains schedule that the three $2,500 payments, originally treated as interest, were, on closing the sale, to be treated as principal pursuant to an agreement between the seller and purchaser. Taxpayer promised to produce the alleged agreement or a copy of it but failed to do so at the trial. The Tax Court found that the note was sold for $190,000 and that the three $2,500 payments constituted interest payments. (Pet. App. 8a; R. 1318, 1346, T.C. Op. 27, 47.) The court of appeals held that these findings were not clearly erroneous (Pet. App. 8a).

5. In 1951, taxpayer acquired the stock of Metropolitan Radio Corporation of Chicago (which operated radio station WMOR) from various persons, including two officials of the Chicago Restaurant Association. On the joint 1951 income tax return filed by taxpayer and Mrs. Esther Melnick Teitelbaum, the following loss was claimed (Pet. App. 8a–9a):

> RADIO STATION W.M.O.R.:
> I advanced the sum of $71,213.18 to discharge the payroll debts, rent, taxes due to the government for Social Security and Withholding taxes of F. M. Radio Station, operated by myself. The corporate name was merely retained as a legal convenience and the station was never operated as a corporation. No income was received and funds were advanced by myself personally ---------- $71,213.18

Of this total claim, $22,269.88 represented items which did not constitute expenses of WMOR, and items total-

ing $20,901.94 had been deducted previously by taxpayer and his wife on their tax returns. At least $48,289.83 had been advanced by taxpayer to pay expenses of the Metropolitan Radio Corporation of Chicago. (Pet. App. 8a–9a; R. 1333–1335, T.C. Op. 38–39.)

In 1952, the Metropolitan Radio Corporation of Chicago was the subject of a petition in bankruptcy, and on April 18, 1952, the corporation was adjudicated bankrupt. The list of claims filed in the bankruptcy included the taxpayer's claim for loans in the amount of $71,213.18. Except for the fact of bankruptcy in 1952, no evidence of the uncollectibility of the advances made by the taxpayer was presented in the Tax Court. Accordingly, the Tax Court sustained the Commissioner's determination that the alleged loss of $71,213.18 did not occur in 1951. (Pet. App. 9a; R. 1334, 1351, T.C. Op. 39, 50.) The court of appeals affirmed (Pet. App. 9a).

6. During 1949–1951, taxpayer incurred expenses in traveling to Miami, Florida, where his then-to-be second wife lived and to Indio, California, where his first wife and family resided (R. 953–954). There is no evidence that taxpayer conducted any business in Florida (R. 892–893, 897–899, 954). The date farm in California was not operated as a business for profit (R. 1314–1315, 1344–1345, T.C. Op. 24–25, 46). There is no evidence that taxpayer made these trips for any purpose other than personal visits. The Tax Court found no deductible travel or hotel expenses beyond those already allowed by the Commissioner (R. 1323–1324, 1349–1350, T.C. Op. 31, 49–50), and the court of appeals affirmed (Pet. App. 9a–10a).

7. Substantial sums which had been distributed to taxpayer out of the operations of the Fine Arts Building and the Douglas Building[4] in Chicago were not reported as income. Taxpayer directed the real estate management agency in charge of the buildings to issue letters to him to evidence the amounts which had been paid to him, to his partner, and to the Tyted Company. At taxpayer's direction, these letters did not reflect amounts which had been disbursed out of the building agency accounts (on taxpayer's instructions), which were not normally part of the operating expenses of the buildings and which were reflected on the agency's statements as distributions of income to the owners of the buildings. Taxpayer sold his interest in the Douglas Building in 1951. In reporting net capital gain from the sale, taxpayer included an expense item of $200,000 as expenses not theretofore deducted. Many of the items included in that total had previously been deducted. The $200,000 item appeared on a page of the tax return prepared by the taxpayer personally and added to a schedule of cost data on a prior page of the return which had been prepared by taxpayer's attorney. (Pet. App. 10a–11a; R. 1288–1300, 1301–1309, 1324–1333, 1350, T.C. Op. 6–14, 15–21, 31–38, 50.) The Tax Court held that taxpayer had prepared the addition to the return

[4] The Tyted Company acquired the Douglas Building on June 1, 1944. On December 27, 1944, Tyted conveyed title to the La Salle National Bank as trustee under a trust agreement that the beneficial interest in the property was in Tyted and that the power of direction was vested in taxpayer and his wife. (R. 1285, T.C. Op. 4.)

with knowledge of its falsity and with intent to evade tax (Pet. App. 11a; R. 1350, T.C. Op. 50).

8. In addition to the matters discussed above, the Tax Court sustained deficiencies in tax arising out of other transactions (R. 1351–1352, T.C. Op. 50–51), including the deduction in 1950 of a campaign contribution, allegedly paid for the Chicago Restaurant Association, which taxpayer failed to substantiate (R. 1318–1320, 1347–1348, T.C. Op. 27–28, 47–48), and the deduction in 1951 of a $49,800 catch-all expense item in connection with taxpayer's activity as labor counsel for the Association, which expense taxpayer did not substantiate as other than a duplication of specified deductions (R. 1320–1323, 1348–1349, T.C. Op. 28–31, 49).

The Tax Court found that the Commissioner had established a pattern of conduct amounting to fraud with intent to evade tax (R. 1343–1344, 1349, T.C. Op. 45, 49). The Tax Court based this finding on the entire record, including taxpayer's manipulation of the property management agent's reports with respect to the Tyted Company, taxpayer's failure to report income from the buildings, which was distributed to him, and his unwarranted claim for a catch-all professional expense deduction. The court of appeals affirmed the Tax Court's determinations of fraud with respect to 1946, 1947, and 1951 (Pet. App. 11a; R. 1343–1344, 1349, T.C. Op. 45, 49), as well as all the findings of deficiencies (Pet. App. 11a).

In previous proceedings, taxpayer had been convicted by a jury of attempting to defeat and evade the income taxes of the Tyted Company, himself, and

Esther Melnick Teitelbaum, for the years 1946 and 1947, in violation of Section 145(b) of the Internal Revenue Code of 1939 (R. 1312–1313, T. C. Op. 23; Ex. 1-A). He also had been indicted and charged with attempting to evade and defeat the joint income taxes owing by himself and his former wife for 1950 and 1951, and entered a plea of nolo contendere upon which he was found guilty on both counts (R. 1335, T. C. Op. 40; Ex. 2-B).[5] Both the Tax Court and the court of appeals stated that determinations of fraud in the present case are amply supported by the record without regard to the additional evidence of taxpayer's criminal fraud conviction (Pet. App. 11a; R. 1343–1344, T. C. Op. 45).

ARGUMENT

The questions presented to the courts below were essentially factual and turn upon the record facts. Their concurrent findings are final in the absence of a very exceptional showing of error. *Comstock* v. *Group of Investors*, 335 U.S. 211, 214. Taxpayer's

[5] On the conviction with respect to 1946 and 1947, the imposition of sentence was suspended and the taxpayer was placed on probation for twelve months (Ex. 1-A). On the judgment for 1950 and 1951, the taxpayer was sentenced to imprisonment for twelve months, but the sentence was suspended and the taxpayer placed on probation for that period (Ex. 2-B).

As a result of the conviction of income tax evasion for the years here in issue, the Supreme Court of Illinois suspended the taxpayer from the practice of law for three years. *In re Teitelbaum*, 13 Ill. 2d 586, 150 N.E. 2d 873, certiorari denied, 358 U.S. 881.

In *In the Matter of Abraham Teitelbaum*, 253 F. 2d 1 (C.A. 7th), the court of appeals dismissed the appeal from the denial of a petition for disbarment by the United States District Court on the ground that the United States Attorney had no standing to bring the appeal.

contention that Sections 58 and 294(d) of the Internal Revenue Code of 1939 (App., *infra*, pp. 21–28) are unconstitutional is plainly without merit. There is no conflict in decisions, nor any other ground shown for further review by this Court.

1. In essence, the taxpayer seeks review of findings of facts which in each instance are supported by substantial evidence.

(*a*) Contrary to taxpayer's assertion (Pet. 25), the determination that the Christmas bonus payments to Mr. Teitelbaum by his client, the Chicago Restaurant Association, were compensation (and therefore income) rather than gifts is supported by minutes of the Association and a letter from the Association to taxpayer; these documents state that the payments were designed to reimburse taxpayer for various expenses and contain no indication of any motivation of personal affection or spontaneous and disinterested generosity. See *Commissioner* v. *Duberstein*, 363 U.S. 278, 285.

(*b*) The finding that the cost of converting the electricity in the Fine Arts Building from direct current to alternating current was a capital expenditure, which must be amortized over its useful life, similarly is supported by the record (see the Statement, *supra*, pp. 4–5). Section 23(a) of the 1939 Code (App., *infra*, p. 20) permits the deduction of "ordinary and necessary expenses paid or incurred * * * in carrying on any trade or business," but Section 24(a)(2) (App., *infra*, p. 21) states that no deduction shall be allowed for amounts paid out for "permanent improvements or betterments made to increase the value of any property." The Tax Court's finding is not, as taxpayer

suggests (Pet. 13–15), contrary to the stipulation that the conversion was done pursuant to an ordinance of the City of Chicago. Regardless of whether such involuntary modifications improve the appearance or efficiency of the property or prolong its life, the modifications do render the property more valuable for the owner's use by bringing it into compliance with the applicable regulation. See *Woolrich Woolen Mills* v. *United States*, 289 F. 2d 444 (C.A. 3d); *Parkersburg Iron & Steel Co.* v. *Burnet*, 48 F. 2d 163, 164–165 (C.A. 4th); *RKO Theatres, Inc.* v. *United States*, 163 F. Supp. 598, 602 (C.Cls.). In the present case, a purchaser properly would have been advised to pay less for a building in which the required conversion had not yet been made than for the building if the conversion already had been accomplished (see Pet. 4a; R. 851–856). As a practical matter, the expenditure in question increased the market value of the building.

(*c*) With respect to the date farm (Pet. App. 5a–6a), the taxpayer's knowledge of likely losses prior to his purchase, his use of the extensive residential facilities as a home for his family, the little time he devoted to the property and the manner of his operation of the property demonstrate that taxpayer did not operate the date farm as a business venture for profit (see the Statement, *supra*, pp. 5–6). Such losses are not deductible under either Section 23(a) of the 1939 Code or Section 23(e) (App., *infra*, p. 20), which permits the deduction of an individual's losses if "incurred in trade or business" or in a transaction "entered into for profit." See *Morton* v. *Commis-*

sioner, 174 F. 2d 302 (C.A. 2d); *Coffey* v. *Commissioner*, 141 F. 2d 204 (C.A. 5th); *White* v. *Commissioner*, 227 F. 2d 779 (C.A. 6th).

(*d*) The evidence presented in the Tax Court does not support taxpayer's contention that the three $2,500 interest payments, which he received in 1949 on Roosevelt College's mortgage note, were, by agreement at the time of sale, to be treated as payments of principal toward the purchase of the notes later during that year (see the Statement, *supra*, pp. 7–8). The document printed by taxpayer as Exhibit "A" (Pet. 24–25), which taxpayer claims is such an agreement, was not introduced in evidence in the Tax Court. Taxpayer asserts (Pet. 23) that he obtained this document on September 5, 1961, after the court of appeals had affirmed the decision of the Tax Court, and that he found the letter in the files of the Dean rather than in the office of the President of Roosevelt College. This document is not in evidence in this case, and even its authenticity has not been established. On the record in this case, taxpayer has failed to sustain his burden of proof that the payments represented something other than interest.

(*e*) Taxpayer's claims to deductions in 1951 for losses of amounts advanced to the Metropolitan Radio Corporation of Chicago were rejected below because taxpayer introduced no evidence of the uncollectibility of the advances in 1951 (see the Statement, *supra*, pp. 8–9). Taxpayer's present contentions (Pet. 18–21) point to no such evidence but reiterate that the corporation was adjudicated bankrupt in 1952—when taxpayer filed his claim for the advances.

(*f*) Taxpayer argues (Pet. 15–18) that he had business in both Chicago, Illinois, and Indio, California, and that, regardless of which of the two is considered his residence, he should be allowed a deduction for travel expenses to the other. During the period in issue, taxpayer's principal business was in Chicago, and he maintained his home there. (R. 1349–1350, T. C. Op. 49.) The date farm in California was not operated as a business, and, even if it had been a business, the expenses of taxpayer's trips to the farm would not be deductible since he introduced no evidence that he traveled to California for any purpose other than to visit his family. Taxpayer's contentions with respect to travel expenses beyond those allowed by the Commissioner are without support in the record. (R. 1350, T. C. Op. 49–50.)

(*g*) Finally, in his petition, taxpayer does not contest the findings of fraud for 1946, 1947 and 1951, which, in any event, are supported by substantial evidence, aside from the taxpayer's conviction of criminal fraud (Pet. App. 10a–11a; R. 1288–1309, 1320–1333, 1342–1344, 1348–1350, T. C. Op. 6–21, 28–38, 44–45, 49–50).

2. (a) The record contains no support for taxpayer's suggestion (Pet. 22) that Judge Russel E. Train, who presided over the present case in the Tax Court, had any "preconceived attitude" against the taxpayer, or any personal bias or prejudice. Taxpayer's argument (Pet. 21–22) that Judge Train was required to refuse to preside at the trial is wholly unwarranted.

Taxpayer had testified at the hearings of the House Subcommittee on Administration of the Internal

Revenue Laws (the so-called King Subcommittee). At that time, although Judge Train was an attorney on the staff of the Joint Committee on Internal Revenue Taxation, he was never a member of the staff of the King Subcommittee. Judge Train was a mere spectator to taxpayer's testimony as a witness before the King Subcommittee and took no position adverse to taxpayer at that time. (Pet. App. 3a; R. 1399.)

During the course of trial, Judge Train mentioned in passing that he had been present during the hearings of the King Subcommittee and had heard the taxpayer testify (R. 1399). Taxpayer made no objection to Judge Train's hearing the case at that time. In fact, taxpayer stated (Pet. App. 3a; R. 1398): "I am not attributing anything wrong. I am perfectly satisfied with your Honor. I certainly wouldn't have asked for a change of venue * * *." Only later, on his motion for reconsideration, did taxpayer make an objection to Judge Train's hearing of the case. The motion was denied by the Tax Court on July 5, 1960. (R. 1430–1438.)

(*b*) Taxpayer's additional argument (Pet. 7–8, 34) that the Commissioner failed to examine his books and records prior to the hearing before the Tax Court is contrary to the evidence, which discloses a thorough investigation of taxpayer's records (see *e.g.*, R. 1330–1331, 1334–1335, T.C Op. 36–37, 39). Moreover, since the findings below were supported by substantial evidence, there is no ground for taxpayer's claims (Pet. 7–8, 26–28, 34) that he has been prejudiced by the lack of adequate investigation by the Commis-

sioner or by the alleged disposition of a separate case involving his former partner.

3. For the first time in his petition here, taxpayer contends (Pet. 28–32) that Sections 58 and 294(d) of the 1939 Code (App., *infra*, pp. 21–28), which require the declaration of estimated tax by individuals and impose additions to tax for the failure to file a declaration or to pay installments of estimated tax or for the substantial underestimation of the estimated tax, are unconstitutional. This assertion plainly is without merit. See *Commissioner* v. *Acker*, 361 U.S. 87.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1962.

APPENDIX

Internal Revenue Code of 1939 (26 U.S.C. 1952 ed.):

SEC. 22. GROSS INCOME.

(a) [as amended by Sec. 1, Public Salary Tax Act of 1939, c. 59, 53 Stat. 574] *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(b) *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(3) [as amended by Sec. 111(a), Revenue Act of 1942, c. 619, 56 Stat. 798] *Gifts, bequests, devises, and inheritances.*—The value of property acquired by gift, bequest, devise, or inheritance. There shall not be excluded from gross income under this paragraph, the income from such property, or, in case the gift, bequest, devise, or inheritance is of income from property, the amount of such income. For the purposes of this

paragraph, if, under the terms of the gift, bequest, devise, or inheritance, payment, crediting, or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property * * *.

* * * * *

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [as amended by Sec. 121(a), Revenue Act of 1942, *supra*] *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

(e) *Losses by Individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. * * *

* * * * *

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) [as amended by Sec. 127(b), Revenue Act of 1942, *supra*] Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x);

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made * * *.

* * * * *

SEC. 58 [as amended by Section 13(a), Individual Income Tax Act of 1944, c. 210, 58 Stat. 231; Section 202(a), Revenue Act of 1948, c. 168, 62 Stat. 110; Section 208(d)(4), Social Security Act Amendments of 1950, c. 809, 64 Stat. 477; and Section 221(g), Revenue Act of 1950, c. 994, 64 Stat. 906] DECLARATION OF ESTIMATED TAX BY INDIVIDUALS.

(a) *Requirement of Declaration.*—Every individual (other than an estate or trust and other than a nonresident alien with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year) shall, at the time prescribed in subsection (d), make a declaration of his estimated tax for the taxable year if—

(1) his gross income from wages (as defined in section 1621) can reasonably be expected to exceed the sum of $4,500 plus $600 with respect to each exemption provided in section 25(b); or

(2) his gross income from sources other than wages (as defined in section 1621) can reasonably be expected to exceed $100 for the taxable year and his gross income to be $600 or more.

(b) *Contents of Declaration.*—In the declaration required under subsection (a) the individual shall state—

(1) the amount which he estimates as the amount of tax under this chapter for the taxable year, without regard to any credits under sections 32 and 35 for taxes withheld at source and without regard to the tax imposed by subchapter E on self-employment income;

(2) the amount which he estimates as the credits for the taxable year under sections 32 and 35; and

(3) the excess of the amount estimated under paragraph (1) over the amount estimated under paragraph (2), which excess for the purposes of this chapter shall be considered the estimated tax for the taxable year.

The declaration shall also contain such other information for the purposes of carrying out the provisions of this chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe, and shall contain or be verified by a written statement that it is made under the penalties of perjury.

(c) *Joint Declaration by Husband and Wife.*—In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with

respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or wife is a nonresident alien . If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(d) *Time and Place for Filing.*—

(1) *In General.*—The declaration required under subsection (a) shall be filed on or before March 15 of the taxable year, except that if the requirements of section 58(a) are first met

(A) after March 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(B) after June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(C) after September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(2) *Amendment of Declaration.*—An individual may make amendments of a declaration filed during the taxable year under this subsection, under regulations prescribed by the Commissioner with the approval of the Secretary. If so made, such amendments may be filed on or before the fifteenth day of the last month of any quarter of the taxable year subsequent to that in which the declaration was filed and in which no previous amendment has been filed, except that in the case of an amend-

ment filed after September 15 of the taxable year, it may be filed on or before January 15 of the succeeding taxable year. Declarations and amendments thereof shall be filed with the collector specified in section 53(b)(1).

(3) *Return as Declaration or Amendment.*—If on or before January 15 of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Commissioner with the approval of the Secretary—

(A) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before such January 15, such return shall, for the purposes of this chapter, be considered as such declaration; and

(B) If the tax shown on the return (reduced by the credits under sections 32 and 35) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall, for the purposes of this chapter, be considered as the amendment of the declaration permitted by paragraph (2) to be filed on or before such January 15.

(e) *Extension of Time.*—The Commissioner may grant a reasonable extension of the time for filing declarations and paying the estimated tax, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(f) *Persons under Disability.*—If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(g) *Signature Presumed Correct.*—The fact that an individual's name is signed to a filed declaration shall be prima facie evidence for all purposes that the declaration was actually signed by him.

(h) *Publicity of Declaration.*—For the purposes of section 55 (relating to publicity of returns), a declaration of estimated tax shall be held and considered a return under this chapter.

SEC. 294. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

* * * * *

(d) [as added by Section 118(a), Revenue Act of 1943, c. 63, 58 Stat. 21; and amended by Sections 6(b)(8) and 13(b), Individual Income Tax Act of 1944, c. 210, 58 Stat. 231, and Section 2, Act of January 2, 1951, c. 1195, 64 Stat. 1136.] *Estimated Tax.*—

(1) *Failure to File Declaration or Pay Installment of Estimated Tax.*—

(A) *Failure to File Declaration.*—In the case of a failure to make and file a declaration of estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of each installment due but unpaid, and in addition, with respect to each such installment due but unpaid, 1 per centum of the unpaid amount thereof for each month (except the first) or frac-

tion thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment. For the purposes of this subparagraph the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the credits under sections 32 and 35.

(B) *Failure to Pay Installments of Estimated Tax Declared.*—Where a declaration of estimated tax has been made and filed within the time prescribed, or where a declaration of estimated tax has been made and filed after the time prescribed and the Commissioner has found that failure to make and file such declaration within the time prescribed was due to reasonable cause and not to willful neglect, in the case of a failure to pay an installment of the estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of the unpaid amount of such installment, and in addition 1 per centum of such unpaid amount for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment.

(2) *Substantial Underestimate of Estimated Tax.*—If 80 per centum of the tax (determined without regard to the credits under sections 32 and 35), in the case of individuals other than farmers exercising an election under section 60(a), or 66⅔ per centum of such tax so determined in the case of such farmers, exceeds the estimated tax (increased by such credits), there shall be added to the tax an amount equal to such excess, or equal to 6 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This paragraph shall not apply to the taxable year in which falls the death of the taxpayer, nor, under regulations prescribed by the Commissioner with the approval of the Secretary, shall it apply to the taxable year in which the taxpayer makes a timely payment of estimated tax within or before each quarter (excluding, in case the taxable year begins in 1943, any quarter beginning prior to July 1, 1943) of such year (or in the case of farmers exercising an election under section 60(a), within the last quarter) in an amount at least as great as though computed (under such regulations) on the basis of the taxpayer's status with respect to the personal exemption and credit for dependents on the date of the filing of the declaration for such taxable year (or in the case of any such farmer, or in case the fifteenth day of the third month of the taxable year occurs after July 1, on July 1 of the taxable year) but otherwise on the basis of the facts shown on his return for the preceding taxable year. In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to

meet the 80 per centum and 66⅔ per centum requirements of this paragraph by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950.